

Remarks:

In the February 21, 2008, Office Action, Claims 157-167 were objected to as depending upon a cancelled claim. Claims 148, 152-155, 157-167, and 187-218 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

On the merits, Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, and 205-218 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Buchman et al. (U.S. Patent Application Publication No. 2001/0053253) in view of Stolmeier et al. (U.S. Patent No. 6,257,763), Provan et al. (U.S. Patent No. 6,286,189), May (U.S. Patent No. 5,725,312), Malin (U.S. Patent No. 6,183,134), and McMahon et al. (U.S. Patent No. 6,138,439). Claims 161-163, 167, 198-200, and 204 were rejected under 35 U.S.C. 103(a) as being unpatentable over Buchman et al. in view of Stolmeier et al., Provan et al., May, Malin, McMahon et al., and Hayashi et al. (U.S. Patent No. 6,074,097).

Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, and 205-218 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Thomas et al. (U.S. Patent No. 6,148,588) in view of Buchman et al., Stolmeier et al., Provan et al., May, and Malin. Claims 161-163, 167, 198-200, and 204 were rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (U.S. Patent No. 6,148,588) in view of Buchman et al., Stolmeier et al., Provan et al., May, Malin, and Hayashi et al.

Response to Claim Objections

Claims 157, 158, 161, 146-167 have been amended to correct their dependency. Claims 157-167 are now all properly dependent. Applicants appreciate the Examiner bringing this issue to their attention.

Response to 112, Second Paragraph Rejections

Applicants have amended Claim 148 to comply with the Examiner's concern that the preamble and the body of the claim were inconsistent. Applicants believe that the amendment to Claim 148 overcomes this concern, and accordingly request reconsideration of Claim 148.

With regard to Claims 148, 187, 212, and 214, the February 21, 2008, Office Action states "if the web material that is used to form the bag and is also used, continuously, to form the hood, that it would not have been clear to the skilled artisan as to where the first end of the hood would exist on a single continuous sheet of web material." This appears to confuse a Section 112, First Paragraph rejection, which relates to the sufficiency of the specification to enable one skilled in the art to practice the invention, with a Section 112, Second Paragraph rejection, which require claims to particularly point out and distinctly claim the subject matter that Applicants regard as their invention. Since it is a Section 112, Second Paragraph that has been made, Applicants have reviewed Claims 148, 187, 212, and 214 to assess whether or not the claim language used is clear, particularly as to "where the first end of the hood would

exist on a single continuous sheet of web material." February 21, 2008, Office Action, page 3.

Upon review, Applicants believe that the language used is quite clear, and clearly specifies that:

1. a single sheet of web material includes a hood having a fold located between first and second ends of the hood;
2. the single sheet of web material also includes a first side panel extending from the first end of the hood;
3. the single sheet of web material also includes a second side panel;
4. a bottom portion included in the sheet of web material is located between the first and second panels;
5. the hood has a first area of structural weakness located intermediate the fold and the first end of the hood; and
6. the hood has a second area of structural weakness located intermediate the fold and the second end of the hood.

Applicants believe that the language used particularly points out and distinctly claims the construction and relative positional relationships of the hood, the two side panels, and the bottom portion. The language used would clearly enable one, particularly one skilled in the art, to draw a picture of these components. Additional language in the claims defining the location of the opening together with the language defining the

reclosable fastener structure would complete the description, and would clearly enable one of skill in the art to precisely understand the claims. For this reason, Applicants respectfully request reconsideration of this rejection. **Should the Examiner not be persuaded, Applicants request a telephone interview with the Examiner prior to the issuance of another Office Action.**

Amendments to the Claims

The claims amended in this Amendment D have been amended in response to the first Section 112, Second Paragraph rejection. No new matter has been added.

Response to 103(a) Rejections

All of the rejections on the merits are believed to be invalid in view of the fact that at least the Buchman et al. reference, as it is used in the February 21, 2008, Office Action, is improperly cited as prior art. The Buchman et al. reference was filed on January 16, 2001, and claims priority of a provisional patent application that was filed on March 24, 2000. The present patent application is a continuation-in-part of U.S. Patent Application No. 09/474,493, filed on December 29, 1999 (the " '493 Application"), which is a continuation-in-part of U.S. Patent Application No. 09/431,732, filed on November 1, 1999 (the " '732 Application"), which claims the benefit of U.S. Provisional Patent Application No. 60/133,810, filed on May 11, 1999 (the " '810 Provisional Application"). The only element of independent Claims 148, 169, 179, 187, 212, and 214 that is not

disclosed in both the '493 Application and the '732 Application as well as in the '810 Provisional Application is the location of the opening on the side of the bag.

Thus, for all of the elements of the independent Claims 148, 169, 179, 187, 212, and 214 other than the location of the opening, the Buchman et al. reference is not available as prior art, since its priority date of March 24, 2000, is in fact after the priority dates available to the independent Claims 148, 169, 179, 187, 212, and 214 for all elements except for the side opening, which are December 29, 1999 (the '493 Application), and November 1, 1999 ('732 Application), and May 11, 1999 ('810 Provisional Application). Thus, since the Buchman et al. reference is cited to teach many other elements of the independent Claims 148, 169, 179, 187, 212, and 214, each and every one of the Section 103(a) rejections is based upon invalid prior art, and must be withdrawn.

Likewise, the McMahon et al. reference (priority date of May 21, 1999) is not available as prior art since it is cited for the "providing structural weaknesses for removing a hood structure into which a pair of reclosable fastener tracks are extend (sic)," and that is clearly shown by the '810 Provisional Application with the priority date of May 11, 1999.

Although the fact that the late priority date of the Buchman et al. reference has rendered all of the Section 103(a) rejections invalid, Applicants must comment on a

completely unsupported statement made in the February 21, 2008, Office Action on

Page 5:

"Therefore to provide areas of structural weakness such that the reclosable fasteners are above said areas of structural weakness would have been obvious to one having ordinary skill in the art for the purpose of facilitating removal of the tamper evidence hood of Buchman et al."

February 21, 2008, Office Action, page 5. In so saying, the Examiner appears to be conceding that this key feature of the invention (namely the location of the structural weaknesses) is not taught or suggested by any of the prior art gleaned by years of examination of this patent application as well as related patent applications, but instead is addressed only by the Examiner's grossly unsupported allegation that so locating the structural weaknesses would have been obvious. Applicants disagree.

In fact, the above statement in the February 21, 2008, Office Action is little more than an explicit admission by the Examiner that he was unable to find a reference teaching part of Applicants' claims in the prior art. Instead of allowing the claims as is required by the law, the February 21, 2008, Office Action instead relied upon an incorrect and invalid assertion that is clearly in violation of proper procedure. The Examiner cannot simply assert such a completely unsupported conclusion, but must instead point to some concrete evidence in the prior art to show this element. Failing the existence of such a reference, the claims must be allowed.

While further discussion of the remaining Section 103(a) rejections is believed to be completely moot in view of the failure of the Buchman et al. reference to constitute

proper prior art, Applicants note that no inference may be drawn of any acquiescence by Applicants to any interpretation or applicability of any of the references that were made in the February 21, 2008, Office Action that are not discussed herein, and any such acquiescence is hereby expressly disclaimed.

Applicants believe that Claims 148, 152-167, 169, 179, and 187-218 are patentable at this time. These claims remain pending following entry of this Amendment D, and are believed to be in condition for allowance at this time. As such, Applicants respectfully request entry of the present Amendment D and reconsideration of the application, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application could so be expedited, the Examiner is requested to call Applicants' undersigned attorney at the number listed below.

Respectfully submitted:

BY /Leslie S. Miller/
Leslie S. Miller
Attorney for Applicants
Registration No. 30,662

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202

(414) 298-8321

Customer No. 22922